

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM G. SOHNGEN and)	
DIANE SOHNGEN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action 04-1407
)	
)	
HOME DEPOT USA, INC and)	
LOUISVILLE LADDER GROUP, LLC,)	
)	
Defendant.)	

ORDER

Plaintiffs William G. Sohngen and Diane Sohngen ("plaintiffs") filed a notice of appeal (Doc. No. 85) of United States Magistrate Judge Lisa Pupo Lenihan's non-dispositive order dated October 19, 2007 (Doc. No. 84).

Although the magistrate judge's order is denominated a "report and recommendation" plaintiffs recognize the report and recommendation as a non-dispositive order of the magistrate judge and this court will likewise treat the report and recommendation as an order denying plaintiffs' motion to file an amended complaint. Upon a review of the matters raised by the appeal, including a review of the transcript of the hearing on plaintiffs' motion to amend held on September 10, 2007 before the magistrate judge (Doc. No. 83), the Report and Recommendation (Doc. No. 84), plaintiffs' notice of appeal and attached exhibits (Doc. No. 85) and response in opposition (Doc. 86) filed by defendants Home Depot USA, Inc. and Louisville Ladder Group, LLC ("defendants"), the court concludes that the order appealed from is neither clearly erroneous nor contrary to law. Fed.R.Civ.P. 72. The magistrate judge, among other things, denied plaintiffs' motion to amend by reason of the prejudicial affect upon defendants if

the amendment was permitted. Prejudice arises due to discovery having been closed for over a year and the need to reopen of discovery at a time when the case should be trial ready. Under those circumstances, the court finds the non-dispositive order should not be reversed.

Therefore, this 17th day of January, 2008, IT IS HEREBY ORDERED that the order referred to (Doc. No. 84) is AFFIRMED and the instant case is referred back to the magistrate judge for further proceedings.

BY THE COURT:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge